

w/o

FILED	
DATE: 3-9-11	
520 O'Clock	P.M.
JEANNE HICKS, CLERK	
BY: RHONDI HAGEN	
Deputy	

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: March 9, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

Sheila Polk/Bill Hughes,

(Via OnBase)

(For Plaintiff)

(Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly,

(Via electronic mail)

(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP,

(Via electronic mail)

(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 12

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 9:21 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Co-Counsel for Defendant

Luis Li, Co-Counsel for Defendant

Truc Do, Co-Counsel for Defendant

Miriam Seifter, Co-Counsel for Defendant

Victim Services Representative

The Jury is not present.

The Court provides Counsel with additional guidance regarding Rule 404(b), non-Rule 404(b) purposes, proper disclosure, causation and the risk under Rule 104(b).

The Court addresses the testimony of the witness Jennifer Haley regarding a prior sweat lodge event in which she participated, admissibility, the bench conference, non-404(b) grounds for admissibility, and, the Court has determined that as to causation it would not be appropriate to admit evidence conditionally under 104(b), there would have to be prior expert testimony.

Counsel are advised that, regarding length of witness testimony, the Court will assist if requested by either Counsel if questions are not being answered so that the trial proceeds in a reasonable manner.

Defense Counsel Do provides Counsel for State and the Court with additional authority on the previously-raised issue of disclosure. Ms. Do presents oral argument. The Court will review the authority provided.

~~~Recess~~~

At 9:44 a.m. the trial resumes with all previously appearing parties and the Jury present.

Jennifer Haley, previously sworn, testifies.

The Court and Counsel conduct a sidebar discussion on the record.

Testimony continues.

The Court and Counsel conduct a sidebar discussion on the record.

Witness Jennifer Haley is asked and answers appropriate questions submitted by the Jury.

The witness is excused, subject to recall, reminded of the exclusion of witnesses and instructed not to discuss the case with other witnesses. The witness is further directed to be careful in any third party discussion of the case.

The Jury is admonished and excused for a recess.

~~~Recess~~~

At 11:23 a.m. the trial resumes with all previously appearing parties and the Jury present.

Dr. Nell Ann Wagoner is sworn and testifies.

The witness is admonished, advised of the Rule Excluding Witnesses, excused for the noon recess and exits the courtroom.

The Jury is admonished, excused for the noon recess, instructed to return at 1:30 p.m. and exits the courtroom.

The Court, Counsel, Detective Diskin and Defendant remain.

The Court cautions Counsel regarding impeaching with prior inconsistent statements during witness examination.

Regarding the previous disclosure issue, the Court states that the authority provided is factually distinguishable and it does not control the situation here. The Court confirms the prior rulings. The Court directs comments to the State that due to timing of the disclosure, and the naming/listing of exhibits, these kinds of issues may arise. There may be evidence apparent to the Defense that was not before and there may be instances where relevant evidence is disclosed late under the Rules. That will not excuse prompt disclosure under the Arizona Rules.

Defense Counsel Li addresses the Court regarding audio evidence the State intends to introduce with the next witness to which Defense has objected. Discussion ensues. The Court **finds** it does not raise 6th Amendment issues, the first part of it is hearsay, the response is essentially relevant and the weight of it and what can be done on cross examination are factual matters. The Court states the audio evidence should be played in a non-hearsay fashion. The Defense reserves its objections.

Defense Counsel Li addresses the State playing the pre-game speech. Defense Counsel moves the Court to play the entire speech under the fair presentation rule. State advises it will play the entire clip, estimated 45 minutes. The Court concurs and states it is a stipulation. Defense Counsel also addresses repeat playing of evidence. Discussion ensues.

Counsel for State raises an issue of Defense providing the State with a copy of a Complaint filed by Spencer and Mehravar against Mr. Ray, Angel Valley and the Hamiltons and objects to the document. Discussion ensues. The Court requests that authority be provided. The Court states that whether a witness has a lawsuit pending goes to bias and motive. In regards to both exhibits, the Court does **not find** a discovery violation on the issue.

~~~Noon Recess~~

At 1:33 p.m. the trial resumes with all previously appearing parties and the Jury present.

Dr. Nell Ann Wagoner resumes testifying.

Exhibits 227 and 228 are admitted into evidence pursuant to stipulation of Counsel.

The Court and Counsel conduct a sidebar discussion on the record.

Testimony continues.

The Jury is admonished and excused for a recess. The witness is admonished, reminded of the Rule Excluding Witnesses and excused for a recess

~~~Recess~~~

At 3:04 p.m. the trial resumes with all previously appearing parties and the Jury present.

Dr. Nell Ann Wagoner resumes testifying.

The Court and Counsel conduct a sidebar discussion on the record.

The witness Dr. Nell Ann Wagoner is asked and answers appropriate questions from the Jury.

The witness is admonished, reminded of the Rule of exclusion of witnesses and excused.

Dennis Mehravar is sworn and testifies.

The Court and Counsel conduct a sidebar discussion on the record.

Testimony continues.

Exhibits 190 and 191 are offered and admitted into evidence pursuant to stipulation of Counsel.

Exhibit 749 is offered and admitted into evidence and is played for the Jury.

Exhibit 747 is offered. Defense Counsel restates a previous objection. Exhibit 747 is admitted into evidence. The Court and Counsel conduct a sidebar discussion on the record.

Testimony continues.

The Jury is admonished, instructed to return at 9:15 a.m. and excused for the day.

The witness is admonished, reminded of the Rule Excluding Witnesses and excused for the day.

~~~Recess~~~

At 4:46 p.m. the trial resumes with all previously appearing parties present. The jury is not present.

The Court addresses Counsel with regard to the record made at the bench regarding whether the Court would read the limiting instruction. The Court confirms that Exhibit 747 was admitted into evidence.

Counsel for the State advises the Court that one of the State's witnesses, Deputy Joseph Sutton, a listed witness in this matter, was being interviewed in the Verde Conference Room with regard to another case and that the live stream of this trial was on the television although the sound was off.

Counsel present oral argument in regards to the civil complaint mentioned earlier. The Court will handle the civil complaint on a question by question basis.

The Court stands adjourned for the day

**END TIME: 5:20 p.m.**

cc: Gallagher & Kennedy, P.C , Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Core, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde